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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200522-0145]

RIN 0648-BJ80

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Extend Portions of the Fishing Year 2019 Scallop Carryover Provisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: This temporary rule implements emergency measures under the authority of the Magnuson-Stevens Fishery Conservation and Management Act to extend portions of the fishing year 2019 carryover provisions in the Atlantic Sea Scallop Fishery Management Plan into the 2020 fishing year. This action is necessary to provide the scallop fleet with the opportunity to land allocations that otherwise may have gone unharvested and reduce economic harm to the scallop industry.

DATES: Effective June 1, 2020, through November 28, 2020. Comments must be received by July 1, 2020.

ADDRESSES: For this action, NMFS developed a Supplemental Impact Report (SIR) for the Environmental Assessment (EA) for Framework 32 to the Atlantic Sea Scallop Fishery Management Plan (FMP) that describes the measures in this temporary rule.

Copies of the SIR and the Regulatory Impact Review of this rulemaking are available on the internet at <https://www.fisheries.noaa.gov/region/new-england-mid-atlantic>.

You may submit comments on this document, identified by NOAA-NMFS-2020-0072, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2020-0072, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Email:* Submit email comments to Travis.Ford@noaa.gov. Include “Comments on Emergency Rule to Extend Scallop Carryover” in the subject line.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, NMFS implemented Framework Adjustment 30 to the Scallop FMP (84 FR 11436; March 27, 2019), which set specifications for fishing year 2019, including carryover provisions for limited access general category (LAGC) individual fishing quota (IFQ), sea scallop access area trip allocations, and research set-aside (RSA). On April 1, 2020, NMFS implemented Framework Adjustment 32 to the Scallop FMP (85 FR 17754; March 31, 2020), which set specifications for the 2020 fishing year. Typically, a limited access vessel has 60 days (until May 30) to fish any access area carryover from the previous fishing year. An IFQ vessel can carry over up to 15 percent of the vessel's total IFQ, which includes the vessel's original IFQ plus the total amount of IFQ transferred to such vessel minus the total IFQ transferred from such vessel (either temporary or permanent), into the next fishing year. RSA projects are generally awarded in the spring, and the recipients have until June 30 the following fishing year to land the awarded scallops.

Toward the end of the 2019 fishing year (March 2020), the scallop industry began to experience negative impacts due to ongoing health mandates and travel restrictions that made it difficult for vessels to make trips. These impacts include disruptions in getting supplies and the inability for crew to access ports.

At its April 15, 2020, meeting, the Council requested that NMFS implement the following measures through an emergency action:

- All 2019 access area carryover pounds and unharvested RSA compensation pounds from fishing year 2019 will be available for harvest for 180 days in fishing year 2020.

- The Nantucket Lightship-West Access Area (NLS-West) would remain an access area during fishing year 2020 for the extent of this emergency action.
- All LAGC IFQ vessels would be able to roll forward all fishing year 2019 unharvested quota for 180 days into fishing year 2020.

After considering the Council's request, NMFS is extending the carryover provisions as requested by the Council with minor changes. The Council's emergency action request would have extended these carryover provisions through September 28, 2020. The rationale from the Council's emergency action request stated that, "Fishing unharvested fishing year 2019 allocations during the fall months could have negative impacts on the scallop resource considering these months are known to have the lowest meat yields in comparison to the rest of the year. Fishing when meat yields are lower means catch rates will be reduced, translating to greater fishing mortality, greater area swept, and negative impacts to the scallop resource relative to if fishing occurred during the spring/summer months." On Georges Bank, scallop meat yields sharply decline in September. Further, observer data from the NLS-West (the area where the bulk of the carryover allocation remains, ~3.2 million lb (~1,451 mt) from fishing years 2018 and 2019 show a spike in discard/kept all rates for flatfish beginning in September. For these reasons, this action allows LAGC IFQ vessels to carryover all fishing year 2019 unharvested quota into fishing year 2020, but only extends the access area and RSA carryover provisions to August 31, 2020.

This action:

- Allows limited access general category individual fishing quota vessels to carryover all fishing year 2019 unharvested quota into fishing year 2020;
- Allows any access area carryover pounds and unharvested research set-aside compensation pounds from fishing year 2019 to be available for harvest through August 31, 2020; and
- Extends the time period vessels may utilize their 2019 access area allocation in the Nantucket Lightship-West Access Area (NLS-West) through August 31, 2020, and then close the area on September 1, 2020, in order to minimize unwanted bycatch.

Although the FMP currently provides for some carryover of unused 2019 fishing allocations, the amount of IFQ carryover is limited to 15 percent of a vessel's total IFQ, and access area carryover is only authorized until May 30, 2020. Extending these carryover provisions further into fishing year 2020 gives vessels more flexibility to harvest some carryover that would otherwise be lost (~5.2 million lb fleet-wide), to land this allocation at the most opportune time, and to avoid unnecessary adverse economic impacts. Overall, does not add any new allocation, it only extends the time period that carryover can be fished. Extending these carryover provisions will not cause any annual catch limits to be exceeded in the scallop fishery.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be

addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. NMFS has determined that extending portions of the fishing year 2019 scallop carryover provisions meets the three criteria for emergency action for the reasons outlined below.

The emergency results from recent, unforeseen events or recently discovered circumstance. On March 13, 2020, a national emergency was declared in response to the global spread of a novel coronavirus (SARS-CoV-2), and the outbreaks of the disease caused by this virus, COVID-19. Days earlier, state governors across the Greater Atlantic region had begun declaring states of emergency in recognition of the growing impacts and risks of COVID-19. The scallop industry began to experience impacts from the COVID-19 pandemic in March 2020. These impacts were unforeseen during the development of Framework 30 and Framework 32 that included measures for the 2020 fishing year that began on April 1, 2020.

The emergency presents serious conservation or management problems in the fishery. As described above, toward the end of fishing year 2019 (March 2020), it became more difficult for some members of the scallop industry to complete fishing trips and fully harvest the available quota. This emergency action helps prevent additional economic losses to industry participants, shoreside businesses, and fishing communities and help offset lost fishing opportunities at the end of the 2019 fishing year. Ensuring

that outstanding fishing year 2019 scallop fishery allocations can be harvested when meat yields are high during the summer months will also prevent negative impacts to the scallop resource and other non-target stocks relative to if they were harvested during the early spring or fall. This action also directly addresses adverse effects to health of participants in the scallop fishery because vessels are afforded flexibility and do not feel obligated to inhabit close quarters on a fishing vessel when the risk of exposure to COVID-19 remains heightened.

The emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. Although the Council has the authority to develop a management action to extend the availability of 2019 carryover, an emergency action can be developed and implemented by NMFS more swiftly than a Council action that is subject to procedural and other requirements not applicable to the Secretary. If the normal regulatory process is used to revise the carryover provisions, it would take substantially longer for the revised provisions to be implemented and could prevent vessels from harvesting any lost carryover at an opportune time. Harvesting scallops when meat yields are high (i.e., June and July) reduces both mortality on scallops and negative impacts on other biological resources. It is not possible to implement these changes through rulemaking following the normal Council process because the Council does not meet again until June. If implemented through emergency action, it may be possible for vessels to maintain any carryover that would have been lost,

land this allocation when meat yields are higher, and avoid unnecessary adverse economic impacts.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. The rule may be extended for a period of not more than 186 days as provided under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) that it is contrary to the public interest and impracticable to provide for prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis make solicitation of public comment contrary to the public interest.

Fishing year 2019 access area carryover would expire on May 30, 2020, and RSA carryover would expire on June 30, 2020. If this action is delayed beyond May 30, 2020, limited access vessels would temporarily lose their carryover allocation. Not taking immediate action would lead to conservation and management problems in the fishery. The start of the fishing year aligns closely with seasonal trends of increasing meat yield, which peak between the spring and mid-summer months depending on the area. Fishing during this time of year is beneficial because scallop meats are larger than in the fall and winter months. Focusing effort during this time of year reduces impacts to the scallop resource as overall fishing mortality is reduced. Further, taking immediate action allows the fleet to catch this carryover in June and July, when meat weight are highest. This

would reduce the dredge hours necessary to harvest the allocation compared to harvesting the scallops only in April and May. Reducing dredge hours has benefits for non-target species, protected resources, and essential fish habitat. This action could not have been put into place sooner to allow for a 30-day delayed effectiveness because this event was unforeseen and did not provide enough time for NMFS to publish this temporary rule by May 30, 2020, the end of the access area carryover period. Delaying the implementation of this action for 30 days would reduce positive economic benefits to the scallop fleet that this rule is intended to provide.

Although this action is being implementing without notice and comment, NMFS is seeking public comment on this rule for purposes of assessing the need to extend the rule if other measures are not implemented before the expiration of this rule.

For these same reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This action is undertaken at the request of the Council. The Council urged that NMFS implement this action quickly in order to minimize any economic impacts on the scallop fleet as a result of ongoing health mandates and travel restrictions and to help offset lost fishing opportunities at the end of the 2019 fishing year. Moreover, it would be contrary to the public interest if this rule does not become effective immediately because allowing carryover allocations to expire and then reinstating them would cause confusing for the fleet and enforcement and create additional regulatory and administrative burden. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

This action is being taken pursuant to the emergency provision of MSA and is exempt from review under Executive Order 12866.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

In the interest of receiving public input on this action, the SIR analyzing this action will be made available to the public and this temporary final rule solicits public comment.

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: May 22, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

2. In § 648.53, suspend paragraph (h)(2)(v)(A) and add paragraph (h)(2)(v)(B) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(h) * * *

(2) * * *

(v) * * *

(B) With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(ii)(L) for the entirety of fishing year 2019, LAGC IFQ vessels that have unused IFQ on the last day of March of fishing year 2019 may carry 100 percent of the vessel's unharvested IFQ into fishing year 2020.

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3. In § 648.56, suspend paragraph (f) and add paragraph (i) to read as follows:

§ 648.56 Scallop research.

* * * * *

(i) If all fishing year 2019 RSA pounds awarded to a project cannot be harvested during the 2019 fishing year, RSA TAC awarded to that project may be harvested through August 31, 2020.

4. In § 648.59, suspend paragraphs (b)(3)(i)(B)(1)(ii), (b)(3)(i)(B)(2)(ii), and (c) revise paragraph (b)(3)(i)(B)(1)(iii), and add paragraphs (b)(3)(i)(B)(2)(iv), and (h) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area

Program requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) * * *

(1) * * *

(iii) For the 2019 fishing year and through August 31 of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of any unharvested 2019 Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60. For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

* * * * *

(2) * * *

(iv) For the 2019 fishing year and the first through August 31 of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its fishing year 2019 Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60(a), (c), and (f). For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the possession limit is not exceeded on any one trip.

* * * * *

(h) *Fishing year 2019 Scallop Access Area scallop allocation carryover.* For fishing year 2019 Access Area scallop allocation carryover, with the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from fishing year 2019 through August 31, 2020, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit.

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5. In § 648.60, suspend paragraph (f) and add paragraph (i) to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(i) *Nantucket Lightship West Scallop Rotational Area.* The Nantucket Lightship West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Table 9 to paragraph (i)

Point	N latitude	W longitude
NLSW1	40°20'	70°00'
NLSW2	40°43.44'	70°00'
NLSW3	40°43.44'	69°30'
NLSW4	40°20'	69°30'
NLSW1	40°20'	70°00'

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